

EXHIBIT 65

BEN SELMAN - 9/17/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:) CHAPTER 11
)
HIGHLAND CAPITAL) CASE NO.
MANAGEMENT, L.P.,)
) 19-34054-SGI11
Debtor.)

-----x)
)
HIGHLAND CAPITAL)
MANAGEMENT, L.P.,)
) ADVERSARY
Plaintiff,) PROCEEDING
) NO:
Vs.) 21-03000-SGI

)
HIGHLAND CAPITAL)
MANAGEMENT FUND)
ADVISORS, L.P.; NEXPOINT)
ADVISORS, L.P.; HIGHLAND)
INCOME FUND; NEXPOINT)
STRATEGIC OPPORTUNITIES)
FUND; NEXPOINT CAPITAL,)
INC.; AND CLO HOLDCO,)
LTD.,)

)
Defendants.)
)

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REMOTE DEPOSITION OF BEN SELMAN

Waco, Texas

Friday, September 17, 2021

Reported by:

KIM A. McCANN, RMR, CRR, CSR

JOB NO. 199442

<p>Page 2</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2</p> <p>3 September 17, 2021</p> <p>4 2:02 p.m. Central</p> <p>5</p> <p>6 Remote Oral deposition of Ben Selman,</p> <p>7 held at the offices of Naman, Howell, Smith &</p> <p>8 Lee, located in Waco, Texas, pursuant to the</p> <p>9 Federal Rules of Civil Procedure before Kim A.</p> <p>10 McCann, Registered Merit Reporter, Certified</p> <p>11 Realtime Reporter and Certified Shorthand</p> <p>12 Reporter in and for the State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A P P E A R A N C E S:</p> <p>3 (Remote via Zoom)</p> <p>4 Counsel for the Debtor:</p> <p>5 Pachulski Stang Ziehl & Jones</p> <p>6 150 California Street</p> <p>7 San Francisco, California 94111</p> <p>8 BY: Kenneth Brown, Esq.</p> <p>9 - and -</p> <p>10 Pachulski Stang Ziehl & Jones</p> <p>11 780 Third Avenue</p> <p>12 New York, New York 10017</p> <p>13 BY: Hayley Winograd, Esq.</p> <p>14</p> <p>15 Counsel for HCRE Partners, LLC (n/k/a NexPoint</p> <p>16 Real Estate Partners, LLC):</p> <p>17 WICK PHILLIPS</p> <p>18 100 Throckmorton Street</p> <p>19 Fort Worth, Texas 76102</p> <p>20 BY: Lauren Drawhorn, Esq.</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 La Asia Canty</p> <p>24 Robert L. Kehr</p> <p>25</p>
<p>Page 4</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 I N D E X</p> <p>3 PAGE</p> <p>4 Examination by Mr. Brown 5</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit A NexPoint Real Estate Partners, 23</p> <p>9 LLC's Designation of Expert</p> <p>10 Witness</p> <p>11 Exhibit B Index of Documents Examined by 30</p> <p>12 Expert</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 P R O C E E D I N G S</p> <p>3 BEN SELMAN,</p> <p>4 Having been first duly sworn, testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. BROWN:</p> <p>8 Q. Good afternoon, Mr. Selman. My name</p> <p>9 is Ken Brown and I -- I'm one of the lawyers for</p> <p>10 Highland Capital Management, LP. And this</p> <p>11 proceeding today is related to Highland -- and</p> <p>12 I'm going to refer to Highland Capital</p> <p>13 Management, LP as Highland in this deposition.</p> <p>14 Will you understand what I mean when</p> <p>15 I say "Highland"?</p> <p>16 A. Yes.</p> <p>17 Q. This proceeding today is -- relates</p> <p>18 to Highland's motion to disqualify the</p> <p>19 Wick Phillips law firm from the representation of</p> <p>20 an entity that we're going to -- well, let's see.</p> <p>21 Maybe we should get the definitions straight</p> <p>22 here.</p> <p>23 So NexPoint Real Estate Partners,</p> <p>24 also known as HCRE Partners, the motion is to</p> <p>25 disqualify Wick Phillips from representing HCRE</p>

<p>Page 6</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Partners, LLC in connection with a proof of claim</p> <p>3 they filed in the bankruptcy case against</p> <p>4 Highland.</p> <p>5 Is that your understanding?</p> <p>6 A. Yes.</p> <p>7 Q. And is it okay with you if I refer to</p> <p>8 NexPoint Real Estate Partners, also known as HCRE</p> <p>9 Partners, LLC as HCRE?</p> <p>10 A. Yes.</p> <p>11 Q. And you'll understand what I'm</p> <p>12 referring to?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Can you tell me whether or not</p> <p>15 you've ever been deposed before, Mr. Selman?</p> <p>16 A. I have.</p> <p>17 Q. How many times?</p> <p>18 A. Three or four, I think.</p> <p>19 Q. Okay. So --</p> <p>20 A. I'm not --</p> <p>21 Q. I'm going to assume --</p> <p>22 A. I'm not real sure about that. I</p> <p>23 think it's three or four.</p> <p>24 Q. All right. I'm going</p> <p>25 to nevertheless -- even though I'm sure you're</p>	<p>Page 7</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 relatively familiar with the ground rules, I'm</p> <p>3 going to go through them, nevertheless, just to</p> <p>4 make sure we're all on the same page.</p> <p>5 So you understand your testimony here</p> <p>6 is under oath; even though we're doing this</p> <p>7 remotely and we're all in separate places, you're</p> <p>8 sworn and this is just like you were testifying</p> <p>9 in court. Do you understand that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And because you're under oath,</p> <p>12 you have the obligation to tell the truth. You</p> <p>13 understand that?</p> <p>14 A. Yes.</p> <p>15 Q. And everything you say and I say here</p> <p>16 and your lawyer says, it's all on the record and</p> <p>17 it's going to appear in the transcript. You</p> <p>18 understand that?</p> <p>19 A. The only correction is I don't</p> <p>20 actually have a lawyer. I'm not represented in</p> <p>21 this matter, but I do understand the concept of</p> <p>22 transcript.</p> <p>23 Q. Okay. I was referring to</p> <p>24 Ms. Drawhorn who --</p> <p>25 MR. BROWN: Who are you appearing</p>
<p>Page 8</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 for, Ms. Drawhorn?</p> <p>3 MS. DRAWHORN: I'm appearing for</p> <p>4 NexPoint Real Estate Partners, LLC formerly</p> <p>5 known as HCRE Partners, LLC.</p> <p>6 MR. BROWN: Understood.</p> <p>7 Q. Pardon my inaccuracy and thank you</p> <p>8 for correcting me.</p> <p>9 A. You're welcome.</p> <p>10 Q. You're familiar with deposition</p> <p>11 transcripts, you've seen them before; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you will have an opportunity to</p> <p>14 review this -- the transcript after it's</p> <p>15 completed and to make corrections to it. You</p> <p>16 understand that?</p> <p>17 A. Yes.</p> <p>18 Q. You also understand that if you make</p> <p>19 any changes to the -- to the transcript, I am</p> <p>20 entitled to and may comment on those changes at</p> <p>21 the hearing on this matter?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Important that you understand</p> <p>24 my questions. If you don't, please ask me --</p> <p>25 please tell me you don't understand it, and I'll</p>	<p>Page 9</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 try and state it in a way that you can better</p> <p>3 understand it. Okay?</p> <p>4 A. Yes.</p> <p>5 Q. Also even more important than usual</p> <p>6 because we're not in the same room, it's</p> <p>7 important that we -- none of us try and talk at</p> <p>8 the same time because the court reporter can only</p> <p>9 take down one person talking at a time.</p> <p>10 So if you would permit me to complete</p> <p>11 my question before you answer it, that will make</p> <p>12 for a -- even if you know what I'm going to say,</p> <p>13 and you may well, it will permit for a cleaner</p> <p>14 record. You understand that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So are you comfortable that</p> <p>17 you understand the deposition process and the</p> <p>18 ground rules?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, is it correct that you're</p> <p>21 going to testify at the hearing on the</p> <p>22 disqualification motion as an expert witness;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Not -- you're not a fact witness or</p>

<p style="text-align: right;">Page 10</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 percipient witness in this case, are you?</p> <p>3 A. No, I am not.</p> <p>4 Q. Where are you located, Mr. Selman?</p> <p>5 A. I'm located --</p> <p>6 Q. Where are you now?</p> <p>7 A. I'm located in my firm's offices in</p> <p>8 Waco, Texas.</p> <p>9 Q. And where is Wick Phillips' lawyer</p> <p>10 located?</p> <p>11 A. Couldn't tell you.</p> <p>12 Q. Okay. Not in the same room with you;</p> <p>13 correct?</p> <p>14 A. No.</p> <p>15 Q. Is there anyone else in the room with</p> <p>16 you?</p> <p>17 A. No.</p> <p>18 Q. Okay. You understand that you're not</p> <p>19 permitted to contact -- to contact anyone about</p> <p>20 the subject of this deposition now that you've</p> <p>21 been sworn?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And you understand that it's</p> <p>24 my position that if you do have discussions with</p> <p>25 anyone after you've been sworn, including the</p>	<p style="text-align: right;">Page 11</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 lawyer for Wick Phillips, I'm entitled to inquire</p> <p>3 as to the nature of those discussions.</p> <p>4 Do you understand that?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any reason that you cannot</p> <p>7 testify today competently and truthfully?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Okay. So how are you currently</p> <p>10 employed, Mr. Selman?</p> <p>11 A. I'm an attorney with the law firm of</p> <p>12 Naman Howell Smith & Lee, and I'm an adjunct</p> <p>13 professor at Baylor University School of Law.</p> <p>14 Q. Okay. How long have you been with</p> <p>15 your -- your current firm?</p> <p>16 A. I began here in 1989.</p> <p>17 Q. Are you a founder of the firm?</p> <p>18 A. No.</p> <p>19 Q. Are you a partner -- you're a partner</p> <p>20 in the firm; correct?</p> <p>21 A. That's technically difficult to</p> <p>22 answer. My title is of counsel at this time, but</p> <p>23 I believe the correct construction is income</p> <p>24 partner.</p> <p>25 Q. Okay. Can you describe the nature of</p>
<p style="text-align: right;">Page 12</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 your practice?</p> <p>3 A. My practice is primarily family law</p> <p>4 primarily in the area of dissolution property</p> <p>5 only. I do some work in regard to the defense of</p> <p>6 medical malpractice claims for a couple of large</p> <p>7 hospital systems, but that work is sporadic and</p> <p>8 not frequent. I represent a nongovernmental</p> <p>9 organization in regard to licensing in the</p> <p>10 delivery of care to children and the issues</p> <p>11 arising through that. And I have various</p> <p>12 not-for-profits that I deliver some legal</p> <p>13 services to.</p> <p>14 Q. Have you ever been party to a lawsuit</p> <p>15 personally?</p> <p>16 A. No.</p> <p>17 Q. Have you ever testified in court as</p> <p>18 an expert witness?</p> <p>19 A. Yes.</p> <p>20 Q. How many times?</p> <p>21 A. That is truly hard to say.</p> <p>22 Frequently in family law practice, other</p> <p>23 practicing family law specialists will be</p> <p>24 designated as expert witnesses to testify as to</p> <p>25 the reasonableness and necessity of attorney's</p>	<p style="text-align: right;">Page 13</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 fees under the old standard.</p> <p>3 That has fallen off significantly</p> <p>4 since the Supreme Court changed the standard</p> <p>5 around and we're not designated now as testifying</p> <p>6 witness -- testifying experts but instead as</p> <p>7 testifying rebuttal witnesses to match the</p> <p>8 standard.</p> <p>9 I have testified live in regard to</p> <p>10 issues that are on the table today previously in</p> <p>11 State District Court one time, and I've testified</p> <p>12 live in regard to the reasonableness and</p> <p>13 necessity of attorney's fees in arbitration</p> <p>14 matters.</p> <p>15 Q. Okay. You've said, I believe -- and</p> <p>16 I'll try and say the words you've said -- but you</p> <p>17 said you testified in court one time with respect</p> <p>18 to the matters on the table today, and I want to</p> <p>19 understand what you mean by that.</p> <p>20 Can you elaborate?</p> <p>21 A. Yes. It's a application of the</p> <p>22 Disciplinary Rules Under Oath, the Texas</p> <p>23 Disciplinary Rules of Professional Conduct and</p> <p>24 the ABA Model Rules with regard to conflicts of</p> <p>25 interest.</p>

<p style="text-align: right;">Page 14</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Okay. And can you be more specific</p> <p>3 about the nature of your testimony; in other</p> <p>4 words, were there particular rules involved?</p> <p>5 What was the issue and what were the rules</p> <p>6 involved in the one time you have been -- you've</p> <p>7 testified in court with respect to the Texas</p> <p>8 Disciplinary and ABA Model Rules?</p> <p>9 A. The rules involved were Rule 1.06 and</p> <p>10 1.09 of the Disciplinary Rules of Professional</p> <p>11 Conduct and Rules 1.7 and 1.9 of the ABA Model</p> <p>12 Rules. The issue was subsequent representation</p> <p>13 of client in a unrelated matter, prior</p> <p>14 representation of another client.</p> <p>15 Q. And do you recall the name of that</p> <p>16 lawsuit?</p> <p>17 A. Not offhand. I'm sorry.</p> <p>18 Q. Do you recall any of the parties to</p> <p>19 it?</p> <p>20 A. I recall that the parties to it were</p> <p>21 two owners of car dealerships in the Dallas/Fort</p> <p>22 Worth area. But as I sit here now, to tell you</p> <p>23 the names of the dealerships or the parties, I</p> <p>24 cannot.</p> <p>25 Q. Okay. And when did you -- when was</p>	<p style="text-align: right;">Page 15</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 that testimony?</p> <p>3 A. Maybe -- maybe three or four years</p> <p>4 ago. I'm just not certain of the date.</p> <p>5 Q. And were you retained by a law firm</p> <p>6 to provide testimony on their behalf?</p> <p>7 I -- I think we're both anticipating</p> <p>8 what the other one's going to say because it's</p> <p>9 not a surprise. But I'm going to remind --</p> <p>10 gently remind you, give you a nudge to try and</p> <p>11 wait because I think we both were talking at the</p> <p>12 same time.</p> <p>13 Okay. What was the name of the law</p> <p>14 firm that retained you?</p> <p>15 A. It was Wick Phillips.</p> <p>16 Q. It was. Okay. And what was the</p> <p>17 outcome of that disqualification motion?</p> <p>18 A. The motion to disqualify was</p> <p>19 overruled and attorney's fees were awarded in</p> <p>20 favor of the party against whom the motion had</p> <p>21 been filed.</p> <p>22 Q. Okay. So you've said you testified</p> <p>23 as an expert at trial more -- multiple times,</p> <p>24 only once with respect to attorney conflict of</p> <p>25 interest issues; correct?</p>
<p style="text-align: right;">Page 16</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. What about deposition</p> <p>4 testimony as an expert in matters that didn't go</p> <p>5 to trial? And maybe let me be more specific.</p> <p>6 Have you ever given deposition</p> <p>7 testimony as a expert witness in matters that you</p> <p>8 did not testify in at trial?</p> <p>9 A. I believe the answer is yes, but not</p> <p>10 in regard to ethical issues.</p> <p>11 Q. Okay. So the only time you have been</p> <p>12 retained as an expert on attorney ethical issues</p> <p>13 is this time three or four years ago when you</p> <p>14 were retained by Wick Phillips; is that correct?</p> <p>15 A. No, that is not correct.</p> <p>16 Q. Okay. Tell me about the other times</p> <p>17 you have been retained as an expert with respect</p> <p>18 to attorney ethical issues?</p> <p>19 A. I'm consulted from time to time by</p> <p>20 other law firms about ethical issues and I'm paid</p> <p>21 for that, and I assume that that's probably what</p> <p>22 you're asking about. In terms of retainer, our</p> <p>23 practice is to send a bill for the time expended,</p> <p>24 generally answer questions over the telephone or</p> <p>25 by email. And without a formal engagement as is</p>	<p style="text-align: right;">Page 17</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 the process here, I do that relatively</p> <p>3 frequently.</p> <p>4 I'm also retained in certain</p> <p>5 disciplinary matters as a witness, and those</p> <p>6 generally speaking do not result in testimony.</p> <p>7 They generally speaking result in direction of</p> <p>8 how to handle the matter and who to handle it</p> <p>9 with and what the forms take and that kind of</p> <p>10 advice.</p> <p>11 But there, once again, we handle the</p> <p>12 matter -- I handle the matter generally by</p> <p>13 telephone and email, not by any kind of</p> <p>14 formalized filing and bill for the time that I</p> <p>15 spend on that. There's no formal retainer</p> <p>16 agreement nor is there any billing usually but</p> <p>17 beyond one time for specific advice in regard to</p> <p>18 a specific issue.</p> <p>19 Q. And has your work in that capacity --</p> <p>20 and I'm going to characterize it -- tell me if</p> <p>21 I'm mischaracterizing it, but I'm going to</p> <p>22 characterize that as you working as a consultant</p> <p>23 as opposed to an expert witness.</p> <p>24 Would you agree with that?</p> <p>25 A. Well, I think that's fair. I don't</p>

<p style="text-align: right;">Page 18</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 want to minimize the role I play in terms of</p> <p>3 being able to lend some degree of expertise to</p> <p>4 the conversations that are going on. But I</p> <p>5 believe "consultant" is a fair word.</p> <p>6 Q. And that's not my intention at all.</p> <p>7 I just want to have a way to refer and</p> <p>8 distinguish between the work you do as an expert</p> <p>9 witness with respect to attorney ethical issues</p> <p>10 and the work that you do as a nonexpert witness.</p> <p>11 So that's my only intention here.</p> <p>12 With respect to the work you do with</p> <p>13 clients in a nonexpert witness capacity advising</p> <p>14 with respect to attorney ethics, have you ever</p> <p>15 provided advice with respect to the matter at</p> <p>16 hand today or the matter at hand in connection</p> <p>17 with the Wick Phillips disqualification issue,</p> <p>18 i.e., whether or not a matter constitutes --</p> <p>19 subsequent representation constitutes the same or</p> <p>20 substantially related matter under Texas Rule</p> <p>21 1.09 or any other similar state law or the Model</p> <p>22 -- the Model Rule analog?</p> <p>23 A. Yes.</p> <p>24 Q. How many times?</p> <p>25 A. I would have absolutely no way of</p>	<p style="text-align: right;">Page 19</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 determining that. I'm not -- I'm not trying to</p> <p>3 avoid the question, I just -- it's a matter</p> <p>4 that's frequently done. I frequently don't</p> <p>5 charge for it. I frequently do charge for it in</p> <p>6 terms of a standard engagement, though that just</p> <p>7 doesn't go on.</p> <p>8 So I've got really no way to track</p> <p>9 that as that kind of representation -- as that</p> <p>10 kind of consultancy.</p> <p>11 Q. Understand. I asked you whether you</p> <p>12 testified in court, and I think I know the answer</p> <p>13 to this question. But have you ever testified in</p> <p>14 a tribunal other than at court as an expert</p> <p>15 witness, like in a disciplinary proceeding?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you ever testified in a</p> <p>18 tribunal other than at court on attorney conflict</p> <p>19 issues?</p> <p>20 A. The answer testified, I can't be</p> <p>21 certain where, when, or how many times. If I --</p> <p>22 if I tell you I've been consulted by numerous</p> <p>23 courts about we've got this issue, the -- drawing</p> <p>24 the distinction between expert witness and</p> <p>25 consultant -- we've got this issue, it's a issue</p>
<p style="text-align: right;">Page 20</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 of whatever ethically, do you have an opinion on</p> <p>3 that, then once again, I'd be unable to tell you</p> <p>4 how many times. But I've done that several</p> <p>5 times.</p> <p>6 Q. And have you ever done it with</p> <p>7 respect to the issue of whether or not a matter</p> <p>8 constitutes the same or a substantially related</p> <p>9 proceeding to a prior matter?</p> <p>10 A. Yes.</p> <p>11 Q. How many times?</p> <p>12 A. Half a dozen. I don't know. It --</p> <p>13 I'm guessing to try to be helpful.</p> <p>14 Q. Okay. Have you ever been subject to</p> <p>15 a disciplinary proceeding?</p> <p>16 A. I think the correct technical answer</p> <p>17 is no. I'm a family lawyer and so about every</p> <p>18 five to seven years I'll get the angry former</p> <p>19 spouse or angry ex-family member who will make a</p> <p>20 complaint, and those complaints are uniformly</p> <p>21 dismissed without classification on screening.</p> <p>22 I think the correct technical answer</p> <p>23 is no. You know, I take this business very</p> <p>24 seriously, and so if somebody makes a complaint,</p> <p>25 then I -- I think the correct forthright answer</p>	<p style="text-align: right;">Page 21</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 is yes, I've had matters filed not by clients and</p> <p>3 they've been uniformly dismissed.</p> <p>4 Q. Have you ever had a -- so these --</p> <p>5 would you characterize these as -- would they be</p> <p>6 called grievances that get filed by these people?</p> <p>7 A. Yes.</p> <p>8 Q. And who do they get filed with?</p> <p>9 A. The Office of Chief Disciplinary</p> <p>10 Counsel.</p> <p>11 Q. Can you tell me how much of your</p> <p>12 practice consists of providing expert testimony</p> <p>13 or acting as an expert witness?</p> <p>14 A. With any degree of certainty, no. I</p> <p>15 act as ethics counsel to our law firm and have</p> <p>16 for many years. And I act as a continuing member</p> <p>17 of the disciplinary system at this moment. And I</p> <p>18 have continued to render opinions with regard to</p> <p>19 how I believe certain elements of the</p> <p>20 disciplinary system operate in the State of Texas</p> <p>21 to various participants in the disciplinary</p> <p>22 system.</p> <p>23 I have a active practice in</p> <p>24 representing attorneys against whom grievance</p> <p>25 matters have been filed and classified, and I</p>

<p style="text-align: right;">Page 22</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 have a lot of people that call and say, hey, I</p> <p>3 need some help, can you tell me what the answer</p> <p>4 to this question is. A lot of attorneys call and</p> <p>5 ask and I do that, sometimes for money, sometimes</p> <p>6 not.</p> <p>7 Q. So are you unable to estimate what</p> <p>8 portion of your practice that consists of</p> <p>9 compared to the family law practice and the other</p> <p>10 things you've said you do?</p> <p>11 A. Compared to -- compared to family law</p> <p>12 and the other fee-producing matters that I handle</p> <p>13 and looking at the fee production from dealing</p> <p>14 with ethical matters, I would have to say that I</p> <p>15 probably don't have more than 10 percent of my</p> <p>16 fees that come in as a result of ethical opinions</p> <p>17 or work involvement that ignores that there's a</p> <p>18 major component here that I don't bill for.</p> <p>19 Q. Understood. Has any court or</p> <p>20 tribunal not permitted you to testify as an</p> <p>21 expert?</p> <p>22 A. No.</p> <p>23 Q. Has any court or tribunal limited the</p> <p>24 scope of your testimony as an expert?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 23</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 MR. BROWN: La Asia, could you put</p> <p>3 Exhibit A on the screen for us, please?</p> <p>4 (Exhibit A was marked.)</p> <p>5 MR. BROWN: Okay. And I want to</p> <p>6 flip to the Exhibit A to Exhibit A, which</p> <p>7 is the CV of Mr. Selman. Well, you know</p> <p>8 what, let's go back to the first page. I'm</p> <p>9 sorry. Okay.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. BROWN: So -- in any event, I</p> <p>12 want this marked as Exhibit A, so however</p> <p>13 we're going to accomplish that is fine with</p> <p>14 me.</p> <p>15 Q. (BY MR. BROWN) Mr. Selman, have you</p> <p>16 ever seen Exhibit A, which is titled "NexPoint</p> <p>17 Real Estate Partners, LLC's Designation of Expert</p> <p>18 Witness"?</p> <p>19 A. Yes.</p> <p>20 Q. And do you know if -- attached to</p> <p>21 Exhibit A to this NexPoint Real Estate Partners,</p> <p>22 LLC's Designation of Expert Witness, is that a</p> <p>23 true copy of your CV?</p> <p>24 A. It is.</p> <p>25 Q. So there's a list of your writings</p>
<p style="text-align: right;">Page 24</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 and publications on the CV. Is that a complete</p> <p>3 list and a complete and accurate list of the</p> <p>4 things you've written and published and</p> <p>5 presented?</p> <p>6 A. Well --</p> <p>7 MR. BROWN: We can flip down. Keep</p> <p>8 going.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. BROWN: There we go.</p> <p>11 A. I have -- thank you. I had it here</p> <p>12 in front of me.</p> <p>13 Q. Okay.</p> <p>14 A. And the answer to your question is</p> <p>15 going to be twofold. It is not a complete list</p> <p>16 of matters that I've published as far as I can</p> <p>17 tell, lacking only one. However --</p> <p>18 Q. And it's only -- go ahead. Sorry.</p> <p>19 A. That's all right. However, it is</p> <p>20 likewise not even nearly a complete list of what</p> <p>21 I've written. My pattern for writing in</p> <p>22 conjunction with my law school requirements is</p> <p>23 that I write every lecture before I deliver it,</p> <p>24 and those lectures are actually in written form.</p> <p>25 I just threw out four notebooks full</p>	<p style="text-align: right;">Page 25</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 of lectures with regard to a class which is no</p> <p>3 longer presented. Each one of these classes that</p> <p>4 I've presented will have anywhere between 20 and</p> <p>5 25 rather complete lectures. I have written</p> <p>6 those and with few exceptions, they're in a</p> <p>7 position that if I were to drop dead, another</p> <p>8 person could walk into the room and begin to talk</p> <p>9 where I drop dead and can continue that lecture</p> <p>10 on out to the end in good English and in good</p> <p>11 order.</p> <p>12 So there's -- there would be an</p> <p>13 unmanageable number of other matters that I have</p> <p>14 written. The same with publications to do with</p> <p>15 my time in undergraduate school that were</p> <p>16 published, there would literally be dozens, if</p> <p>17 not hundreds of those.</p> <p>18 And during the time of my service on</p> <p>19 the Board of Disciplinary Appeals, I wrote</p> <p>20 probably hundreds of disciplinary judgments and</p> <p>21 signed them, and those matters are -- some are</p> <p>22 public record, some are not. But each one of</p> <p>23 those was either drafted by me or approved</p> <p>24 drafting by an assistant and -- and signed by me.</p> <p>25 So there's a number of publications</p>

<p style="text-align: right;">Page 26</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 that exist. An example of which is I'm involved</p> <p>3 in a current disability matter at this time</p> <p>4 pending in another county, and there will be a</p> <p>5 written judgment in that. It's a -- a judgment</p> <p>6 that I will draft whether -- whatever the</p> <p>7 result's going to be, there will be a judgment.</p> <p>8 I'll draft the judgment, but that judgment will</p> <p>9 not be subject to publication.</p> <p>10 So the correct answer to your</p> <p>11 question is in one sense this is a representative</p> <p>12 public list. In another sense it's short by</p> <p>13 probably several hundred different documents,</p> <p>14 some of which --</p> <p>15 Q. Short by documents that you've</p> <p>16 written for various things but haven't made it</p> <p>17 into -- haven't been published; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And, Mr. Selman, what classes</p> <p>20 do you teach at Baylor? What are you currently</p> <p>21 teaching and what have you previously taught?</p> <p>22 A. The classes that I have taught at</p> <p>23 Baylor have been about eight. I have those under</p> <p>24 a bullet point on page 1 of my CV resum?, and to</p> <p>25 list those -- yeah, you can see them there on the</p>	<p style="text-align: right;">Page 27</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 screen.</p> <p>3 Q. I got it. Okay. Thank you.</p> <p>4 A. Yes, sir.</p> <p>5 Q. What is the Law, Ethics, and Morality</p> <p>6 Seminar?</p> <p>7 A. Well, Law, Ethics, and Morality</p> <p>8 Seminar was the interplay of the ethical system</p> <p>9 in regard to regulation of attorney practice and</p> <p>10 attorney discipline combined with the overarching</p> <p>11 responsibility of attorney to act in a moral way.</p> <p>12 And because it's at Baylor, there was a large</p> <p>13 religious component of that seminar.</p> <p>14 Q. Okay. And the Professional</p> <p>15 Responsibility class?</p> <p>16 A. Yes, that's standard senior.</p> <p>17 Q. Standard, yeah. Okay. Do you</p> <p>18 currently have anything submitted for publication</p> <p>19 that has not yet been published?</p> <p>20 A. No, I do not.</p> <p>21 Q. Do you blog?</p> <p>22 A. No.</p> <p>23 Q. Have you ever published anything on</p> <p>24 the issue of attorney disqualification?</p> <p>25 A. In the sense of submission to a</p>
<p style="text-align: right;">Page 28</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 third-party publisher and acceptance and</p> <p>3 publication, no.</p> <p>4 Q. That's a pregnant pause. In another</p> <p>5 sense, have you?</p> <p>6 A. In any other sense when I'm making</p> <p>7 statements for publication, I will frequently</p> <p>8 include ethical considerations. Sometimes those</p> <p>9 get quoted, but that's some -- that's an element</p> <p>10 that I come back to. And I can't sit here and</p> <p>11 with absolute certainty tell you that I have not</p> <p>12 spoken on that issue and it hadn't gotten -- it</p> <p>13 hadn't gotten into a publication somewhere.</p> <p>14 I have not written a deliberate</p> <p>15 article in regard to the interplay of the rules</p> <p>16 involved in this matter for publication by a</p> <p>17 third-party source.</p> <p>18 Q. Okay. Have you told me all the prior</p> <p>19 work or summarized the prior work you've done</p> <p>20 relating to attorney disqualification? Is there</p> <p>21 anything else?</p> <p>22 A. Well, I don't want to nitpick with</p> <p>23 your question. I think I know what you're asking</p> <p>24 by saying the prior work that I've done. I think</p> <p>25 what you're asking is the works that I've written</p>	<p style="text-align: right;">Page 29</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 down and submitted to third parties for</p> <p>3 publication. If that's -- if that's your</p> <p>4 question, then I've told you everything.</p> <p>5 If the question, however, is the</p> <p>6 prior work that I've done in regard to attorney</p> <p>7 disqualification, then the answer is no.</p> <p>8 Q. Okay. Do you view your CV as</p> <p>9 current?</p> <p>10 A. Relatively.</p> <p>11 Q. Okay. What would you add to it in</p> <p>12 the attorney disqualification arena that's not</p> <p>13 already on there?</p> <p>14 A. I wouldn't add anything else. The</p> <p>15 work I'm referring to -- and I don't intend to be</p> <p>16 obscure with you -- the work that I'm referring</p> <p>17 to is in regard to the drafting, preparation,</p> <p>18 signing, and implementation of disciplinary</p> <p>19 judgments in disciplinary hearings in which I was</p> <p>20 an adjudatory officer, personally I don't feel I</p> <p>21 have a right to comment on publicly that's part</p> <p>22 of my work. Part of it's published; part of it's</p> <p>23 not.</p> <p>24 Q. Are you currently an active member of</p> <p>25 -- well, let me put it another way.</p>

<p style="text-align: right;">Page 30</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Can you tell me the -- the State Bars</p> <p>3 for -- in which you are currently an active</p> <p>4 member?</p> <p>5 A. Texas.</p> <p>6 Q. Just Texas?</p> <p>7 A. Yes, sir.</p> <p>8 Q. We're going to come back to Exhibit A</p> <p>9 to deal with the -- your -- the summary of your</p> <p>10 opinions, but right now I want to go to Exhibit</p> <p>11 -- Exhibit B.</p> <p>12 (Exhibit B was marked.)</p> <p>13 MR. BROWN: So, La Asia, if you</p> <p>14 could put Exhibit B up. And, Kim, if we</p> <p>15 can do whatever we need to do to ensure</p> <p>16 that Exhibit B is marked.</p> <p>17 (Discussion off the record.)</p> <p>18 MR. BROWN: One thing as just a</p> <p>19 housekeeping matter, I think I transmitted</p> <p>20 Exhibits A through O and I will not be</p> <p>21 using them all. So that's why I want to be</p> <p>22 careful of telling you which of the</p> <p>23 exhibits -- of the documents I sent you</p> <p>24 which I actually intend to have marked as</p> <p>25 exhibits to the deposition, it's probably</p>	<p style="text-align: right;">Page 31</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 not going to be everything that I sent.</p> <p>3 Got it.</p> <p>4 THE REPORTER: Yes, sir.</p> <p>5 Q. (BY MR. BROWN) So Exhibit B is up on</p> <p>6 the screen, Mr. Selman. And I -- I gather that</p> <p>7 you also have a binder of exhibits in front of</p> <p>8 you?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Great. So are you looking at</p> <p>11 Exhibit B?</p> <p>12 A. Yes.</p> <p>13 Q. And it's called "Index to Documents</p> <p>14 Examined by Expert." Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever seen it before?</p> <p>17 A. Yes.</p> <p>18 Q. When did you see it?</p> <p>19 A. Last night about 7:00-ish.</p> <p>20 Q. Never saw it before that?</p> <p>21 A. No, sir.</p> <p>22 Q. Didn't see it before it -- did you</p> <p>23 have any role in creating it or drafting it?</p> <p>24 A. Probably. I sent to Ms. Drawhorn a</p> <p>25 list that I had made of the documents that I</p>
<p style="text-align: right;">Page 32</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 examined, and I assume that that may have played</p> <p>3 some part in the drafting of this document. But</p> <p>4 whether I've seen this one before or not, I'm not</p> <p>5 completely sure. But I -- I'm not calling it to</p> <p>6 mind other than I did definitely see it last</p> <p>7 night after I concluded my presentation last</p> <p>8 night.</p> <p>9 Q. When you refer to your -- the</p> <p>10 presentation you did last night, that was</p> <p>11 unrelated to this matter; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is this Exhibit B a complete</p> <p>14 list of all the documents that you've considered</p> <p>15 in forming the opinions that you intend to</p> <p>16 testify on at the hearing on the motion to</p> <p>17 disqualify Wick Phillips?</p> <p>18 A. I believe so, with one possible</p> <p>19 exception.</p> <p>20 Q. And do you want to tell us what the</p> <p>21 exception -- what the one possible exception is?</p> <p>22 A. I have received a document from</p> <p>23 Ms. Drawhorn, I believe, in the last two or three</p> <p>24 days which is entitled "Release From Loan</p> <p>25 Agreement Or Other Security Documents," and it's</p>	<p style="text-align: right;">Page 33</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 not reflected specifically on Exhibit B. I guess</p> <p>3 it could be implied that it's in here, but I</p> <p>4 think the implication would be misleading.</p> <p>5 Q. Understood. I think the reason that</p> <p>6 that's not on this list is she may not have had</p> <p>7 it at the time the list was comprised.</p> <p>8 But in any event, other than that,</p> <p>9 other than the release that you just referred to,</p> <p>10 is this a complete list of all the documents that</p> <p>11 you've considered in formulating any of the</p> <p>12 opinions that you intend to testify upon at the</p> <p>13 hearing on the motion to disqualify</p> <p>14 Wick Phillips?</p> <p>15 A. As far as I know.</p> <p>16 Q. Okay. Now, did you consider any</p> <p>17 legal authorities in forming the opinions that</p> <p>18 you intend to testify upon at the trial -- at the</p> <p>19 hearing on the motion to disqualify</p> <p>20 Wick Phillips?</p> <p>21 A. Yes.</p> <p>22 Q. And why aren't they listed on this --</p> <p>23 on this document?</p> <p>24 A. I don't know.</p> <p>25 Q. What legal authorities did you</p>

<p style="text-align: right;">Page 34</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 consider?</p> <p>3 A. I pulled, examined, and studied four</p> <p>4 disciplinary rules, and I also examined each of</p> <p>5 the cases cited by each of the attorneys in the</p> <p>6 respective motions and responses, but did not</p> <p>7 make copies of those documents.</p> <p>8 Q. But you read them -- you read the</p> <p>9 cases cited in the briefs?</p> <p>10 A. I did.</p> <p>11 Q. Okay. Other than the four</p> <p>12 disciplinary rules and the authority cited in the</p> <p>13 briefs and the parties related to -- you know, in</p> <p>14 support of and the opposition to the</p> <p>15 disqualification motion, did you consider any</p> <p>16 other authorities in formulating your opinions?</p> <p>17 A. I want to correct one thing. I</p> <p>18 misspoke. It was five disciplinary rules that I</p> <p>19 pulled to look at based on my reading of the</p> <p>20 motion and the response.</p> <p>21 Q. Okay.</p> <p>22 A. And other authority that I considered</p> <p>23 was a search of Texas ethics opinions from the</p> <p>24 Texas Center For Legal Ethics and</p> <p>25 Professionalism. And that's the extent of my</p>	<p style="text-align: right;">Page 35</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 literature search.</p> <p>3 Q. Okay. When you searched the Texas</p> <p>4 ethics opinions, did you find any ethical</p> <p>5 opinions that you considered in formulating your</p> <p>6 opinions?</p> <p>7 A. No.</p> <p>8 Q. And what were the five disciplinary</p> <p>9 rules that you considered?</p> <p>10 A. Rule 1.7 and 1.9 of the ABA Model</p> <p>11 Rules, Rule 1.05, 1.06 and 1.09 of the</p> <p>12 Disciplinary Rules of Professional Conduct. And</p> <p>13 I apologize for misspeaking earlier.</p> <p>14 Q. About what?</p> <p>15 A. Telling you I'd looked at four rules</p> <p>16 when I've looked at five.</p> <p>17 Q. Yeah, that's pretty egregious,</p> <p>18 Mr. Selman. Were you in the Boy Scouts?</p> <p>19 A. No, sir.</p> <p>20 Q. All right.</p> <p>21 MR. BROWN: So we've been going</p> <p>22 about an hour. How about a convenience</p> <p>23 break for five minutes?</p> <p>24 THE WITNESS: That's fine. But</p> <p>25 whatever -- whatever y'all agree to is fine</p>
<p style="text-align: right;">Page 36</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 with me.</p> <p>3 MS. DRAWHORN: That's fine with me,</p> <p>4 Ken.</p> <p>5 MR. BROWN: Let's take five</p> <p>6 minutes.</p> <p>7 (Break from 2:50 p.m. to 2:56 p.m.)</p> <p>8 Q. (BY MR. BROWN) So Mr. Selman, you</p> <p>9 had indicated of the five rules, the disciplinary</p> <p>10 rules that you've reviewed in connection with</p> <p>11 forming your opinions, that among them were ADA</p> <p>12 Model Code 1.9 -- and I'm going to get it</p> <p>13 wrong -- but the Texas Disciplinary Rules, I</p> <p>14 don't have at the tip of my tongue what the full</p> <p>15 name of it is?</p> <p>16 A. The Texas Disciplinary Rules of</p> <p>17 Professional Conduct.</p> <p>18 Q. So the Texas Disciplinary Rules of</p> <p>19 Professional Conduct No. 1.09; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Are there -- is ADA Model Code 1.9</p> <p>22 and the Texas Disciplinary Code of Professional</p> <p>23 Conduct, are those materially different in any</p> <p>24 way?</p> <p>25 A. In my opinion, not materially.</p>	<p style="text-align: right;">Page 37</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. How do you consider them different at</p> <p>3 all? Do they reflect a different standard?</p> <p>4 A. No.</p> <p>5 Q. If we could go back to Exhibit A and</p> <p>6 the CV.</p> <p>7 A. Yes, sir.</p> <p>8 Q. So under adjunct professor, the first</p> <p>9 course listed is Professional Responsibility.</p> <p>10 When did you teach that course last?</p> <p>11 A. As the presenting professor full</p> <p>12 time, '93. When I taught it last was a couple of</p> <p>13 quarters ago doing supply teaching for a</p> <p>14 professor who couldn't be there.</p> <p>15 Q. Supply teaching?</p> <p>16 A. Yes.</p> <p>17 Q. What is that?</p> <p>18 A. That means -- that means to step in</p> <p>19 when someone has another obligation and present</p> <p>20 his or her lecture for them.</p> <p>21 Q. Okay. Like a substitute?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So when -- you had said you</p> <p>24 often -- I think you said that you sometimes</p> <p>25 don't enter into engagement agreements with</p>

<p style="text-align: right;">Page 38</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 paying clients, did I recollect that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Texas Disciplinary Rule -- are you</p> <p>5 familiar with Texas Disciplinary Rule 1.04(c)?</p> <p>6 A. I am.</p> <p>7 Q. I think it states when the lawyer has</p> <p>8 not regularly represented the client, the basis</p> <p>9 or rate of the fees shall be communicated to the</p> <p>10 client preferably in writing before or within a</p> <p>11 reasonable time after commencing the</p> <p>12 representation.</p> <p>13 Do you generally follow that rule?</p> <p>14 A. If you're asking do I tell the</p> <p>15 clients fee bases before beginning services, yes,</p> <p>16 I follow that in each case.</p> <p>17 Q. Even when you don't have an</p> <p>18 engagement letter; correct?</p> <p>19 A. That's correct. I think the rule</p> <p>20 speaks for itself in regard to a written</p> <p>21 engagement letter or contract.</p> <p>22 Q. Okay.</p> <p>23 MR. BROWN: So can we flip -- can</p> <p>24 we move to the beginning of Exhibit A? Oh,</p> <p>25 sorry. Actually, Exhibit C. Can we move</p>	<p style="text-align: right;">Page 39</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 -- can we put Exhibit C up?</p> <p>3 (Exhibit C was marked.)</p> <p>4 MR. BROWN: And can we go forward</p> <p>5 to document No. NREPDQ00009? Okay. So I</p> <p>6 do want this entire series of documents,</p> <p>7 the emails before this and this letter all</p> <p>8 -- they were transmitted as Exhibit C, I'd</p> <p>9 like to have them marked as Exhibit C to</p> <p>10 the deposition.</p> <p>11 Q. (BY MR. BROWN) Mr. Selman, have you</p> <p>12 seen this May 14, 2021, letter from the Naman</p> <p>13 Howell Smith & Lee law firm before?</p> <p>14 A. Yes.</p> <p>15 Q. And what is it?</p> <p>16 A. It's an engagement letter.</p> <p>17 Q. With whom?</p> <p>18 A. With Brant Martin and Laura Drawhom</p> <p>19 at Wick Phillips Gould & Martin.</p> <p>20 Q. Is this the engagement letter</p> <p>21 pursuant to which -- that governs your retention</p> <p>22 by Wick Phillips in connection with your service</p> <p>23 as an expert witness for Wick Phillips in -- as</p> <p>24 an expert witness in opposition of the motion to</p> <p>25 disqualify Wick Phillips?</p>
<p style="text-align: right;">Page 40</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Again, I don't want to nitpick, but</p> <p>3 it's in regard to consultation regarding a motion</p> <p>4 to disqualify and response to that.</p> <p>5 Q. Does this engagement letter encompass</p> <p>6 your services as an expert witness in connection</p> <p>7 -- on behalf of Wick Phillips in connection with</p> <p>8 a disqualification motion?</p> <p>9 A. It does.</p> <p>10 Q. And your point is it may encompass</p> <p>11 some other things as well?</p> <p>12 A. Actually, what I was doing was saying</p> <p>13 your question said in opposition to, and I don't</p> <p>14 want it to appear that I entered into this</p> <p>15 relationship either in favor of or in opposition</p> <p>16 to any particular position. I entered into it to</p> <p>17 consult.</p> <p>18 Q. Okay. This letter is dated May 14,</p> <p>19 2021. When were you first contacted by</p> <p>20 Wick Phillips?</p> <p>21 A. I do not recall.</p> <p>22 Q. Prior to May 14, 2021, though;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Who at Wick Phillips contacted you?</p>	<p style="text-align: right;">Page 41</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Ms. Drawhom originally contacted me.</p> <p>3 Q. And you had a prior relationship with</p> <p>4 Wick Phillips, did you not?</p> <p>5 A. I did.</p> <p>6 Q. And who had previously contacted you</p> <p>7 from Wick Phillips in connection with the prior</p> <p>8 representation?</p> <p>9 A. Brant Martin.</p> <p>10 Q. And other than this representation</p> <p>11 and the prior representation which you've</p> <p>12 described, have you had any other dealings with</p> <p>13 Wick Phillips?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Mr. Selman, your hourly rate is</p> <p>16 identified as \$420 an hour at page 2 of the</p> <p>17 May 14, 2021 retention letter.</p> <p>18 Does that accurately reflect the</p> <p>19 hourly rate you're charging in this matter?</p> <p>20 A. Yes.</p> <p>21 Q. Are you doing all the work in</p> <p>22 connection with this matter, or are there other</p> <p>23 people doing work at your firm in connection with</p> <p>24 this matter?</p> <p>25 A. Well, I have staff that prepares</p>

<p style="text-align: right;">Page 42</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 documents that I -- that I use. I've had legal</p> <p>3 assistants assist me in regard to drawing up a</p> <p>4 working outline of the volume of documents that</p> <p>5 all of y'all have filed, which needed to be done.</p> <p>6 But I believe the correct answer to your question</p> <p>7 is I'm doing the work.</p> <p>8 Q. Okay. And you're the only lawyer</p> <p>9 that's doing the work in the matter; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Do you have a different rate that you</p> <p>12 charge for your work as an expert witness</p> <p>13 compared to the work that you do for providing</p> <p>14 other legal services?</p> <p>15 A. The correct answer to that question</p> <p>16 is the \$420 an hour is my computer billing rate.</p> <p>17 That's assigned to me at the beginning of each</p> <p>18 fiscal year. I have lower rates that I charge in</p> <p>19 regard to the delivery of certain law services</p> <p>20 and certain disciplinary services, but I do not</p> <p>21 have a higher rate than \$420 per hour in any</p> <p>22 matter.</p> <p>23 Q. But you're charging Wick Phillips</p> <p>24 \$420 an hour in this matter; correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 43</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Is your compensation in this matter</p> <p>3 in any way related to the outcome of the</p> <p>4 disqualification motion?</p> <p>5 A. No.</p> <p>6 Q. Do you know how much time you've</p> <p>7 spent on this matter to date?</p> <p>8 A. I do not.</p> <p>9 Q. Can you estimate?</p> <p>10 A. Not with any real degree of accuracy.</p> <p>11 Maybe 10 to 12 before yesterday evening.</p> <p>12 Q. Do you know how much you've billed on</p> <p>13 the matter to date?</p> <p>14 A. No.</p> <p>15 Q. Did you spend any time with</p> <p>16 Ms. Drawhorn or any other member of the</p> <p>17 Wick Phillips firm preparing for this deposition?</p> <p>18 A. Let me answer that in this way: I</p> <p>19 talked with Ms. Drawhorn yesterday about the</p> <p>20 release document. And I received electronic</p> <p>21 mail, as I said, last night delivering the</p> <p>22 exhibits, and I opened that probably about 7:00</p> <p>23 or so yesterday evening. I called Ms. Drawhorn</p> <p>24 today prior to the deposition to confirm</p> <p>25 arrangements, but nobody sat with me and prepared</p>
<p style="text-align: right;">Page 44</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 me for a deposition the way we prepare our</p> <p>3 clients for depositions.</p> <p>4 Q. Have you completed your work in</p> <p>5 connection with forming your opinions in this</p> <p>6 matter?</p> <p>7 A. That depends on how many more</p> <p>8 documents the two sides file and ask me to look</p> <p>9 at. If there's more filed and more to look at,</p> <p>10 then no, I haven't concluded my work.</p> <p>11 Q. Let's -- let's make the assumption</p> <p>12 that you've seen the universe of documents. Have</p> <p>13 you completed your work with respect to the</p> <p>14 documents that you have currently had an</p> <p>15 opportunity to consider?</p> <p>16 A. With regard to the documents I have</p> <p>17 currently had an opportunity to consider, yes.</p> <p>18 Q. Okay. So you made a judgment with</p> <p>19 respect to those documents and formed your final</p> <p>20 opinions that you're going to offer at the</p> <p>21 hearing on this matter, assuming there are no</p> <p>22 additional documents?</p> <p>23 A. With one exception, please. I</p> <p>24 understand from talking with Ms. Drawhorn that</p> <p>25 the deposition of the expert for Highland has</p>	<p style="text-align: right;">Page 45</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 been taken, and I expressed a desire to look at</p> <p>3 that. I would like to look at that and see the</p> <p>4 issues that were addressed in that deposition and</p> <p>5 -- and the answers that were given. That might</p> <p>6 or might not have any bearing on my decision.</p> <p>7 Q. Okay.</p> <p>8 A. But I have --</p> <p>9 Q. Other than that -- other than taking</p> <p>10 a look at Mr. Kehr's deposition testimony, you</p> <p>11 have done all the work you are going to do in</p> <p>12 connection with forming your final opinions in</p> <p>13 this matter; is that correct?</p> <p>14 A. That's all the work I plan to do. If</p> <p>15 I'm asked to do more work, I will do more work.</p> <p>16 Q. Okay. What have you been asked to do</p> <p>17 in this case?</p> <p>18 A. I've been asked to evaluate these</p> <p>19 documents that have been transmitted to me, which</p> <p>20 are described in Exhibit B and the release</p> <p>21 document and to render an opinion regarding the</p> <p>22 motion to disqualify and the responses to motion</p> <p>23 to disqualify.</p> <p>24 Q. Anything else?</p> <p>25 A. That's it.</p>

<p style="text-align: right;">Page 46</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Okay. And can you describe what</p> <p>3 you've done in connection with forming your</p> <p>4 opinions to date?</p> <p>5 MS. DRAWHORN: Objection. Okay.</p> <p>6 Objection to the extent I just want to</p> <p>7 caution the witness to limit the work --</p> <p>8 just keep it to the -- if you're talking</p> <p>9 about attorney communications or</p> <p>10 communications you've had with us, only the</p> <p>11 substance that you considered in connection</p> <p>12 with your opinion. The question was a</p> <p>13 little vague, so I just want to --</p> <p>14 Q. (BY MR. BROWN) So let me try and be</p> <p>15 more precise in the question. I'm not asking you</p> <p>16 to tell me about the communications with</p> <p>17 Wick Phillips other than to the extent they have</p> <p>18 provided you with facts you've relied on, outside</p> <p>19 of the documents or assumptions you've relied on</p> <p>20 outside of the documents or any other information</p> <p>21 you've considered in forming your opinions, I</p> <p>22 believe you're obligated to disclose those</p> <p>23 categories of communications to me.</p> <p>24 So with that clarification, I would</p> <p>25 like you to tell me and describe the tasks that</p>	<p style="text-align: right;">Page 47</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 you've performed to date in forming your</p> <p>3 opinions?</p> <p>4 A. I've received what's now three large</p> <p>5 volumes of documents. I've organized those</p> <p>6 documents largely on a chronological scale and</p> <p>7 largely then by party, the debtor, and the</p> <p>8 contesting party. And the third volume that I've</p> <p>9 organized is the exhibits which were received</p> <p>10 last night.</p> <p>11 I've studied each one of these</p> <p>12 documents with regard to the presenting issue.</p> <p>13 I've reviewed what I believe to be the relevant</p> <p>14 disciplinary rules, both federal and Texas in</p> <p>15 regard to the disqualification issue presented</p> <p>16 and contested in the motions. I've looked at the</p> <p>17 cases cited by both parties, and I've formulated</p> <p>18 an opinion based on that work.</p> <p>19 Q. Is that a complete description of the</p> <p>20 work you've done?</p> <p>21 A. I believe so.</p> <p>22 Q. Have you spoken to anyone other than</p> <p>23 members of Wick Phillips in connection with the</p> <p>24 work you've done in this matter?</p> <p>25 A. Staff.</p>
<p style="text-align: right;">Page 48</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Nobody outside your law firm, though?</p> <p>3 A. That's correct.</p> <p>4 Q. You've not spoken to any other</p> <p>5 experts or consultants; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Have you made any assumptions in</p> <p>8 forming your opinions in connection with this</p> <p>9 matter?</p> <p>10 A. Can you be a bit more specific with</p> <p>11 that?</p> <p>12 Q. I -- well, I want to know if -- if</p> <p>13 you have made assumptions with respect to any</p> <p>14 facts that are not established in this case?</p> <p>15 A. I have assumed that each factual</p> <p>16 position taken by the contesting parties in this</p> <p>17 matter are factual positions that can be born out</p> <p>18 through some sort of relevant admissible</p> <p>19 evidence. So I've made that assumption in each</p> <p>20 instance, taking the motions and responses on the</p> <p>21 face of them and assuming that the factual</p> <p>22 positions taken can be born out by correct</p> <p>23 admissible evidence.</p> <p>24 But beyond that, I've really made no</p> <p>25 other assumptions of any relevance to this</p>	<p style="text-align: right;">Page 49</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 proceeding.</p> <p>3 Q. Okay. All right.</p> <p>4 MR. BROWN: Can we put Exhibit A</p> <p>5 back up? Let's go to the beginning of</p> <p>6 Exhibit A. Okay.</p> <p>7 Q. (BY MR. BROWN) So have you seen this</p> <p>8 exhibit -- this part of Exhibit A before,</p> <p>9 NexPoint Real Estate Partner, LLC's Designation</p> <p>10 of Expert Witness?</p> <p>11 A. Not before the designation of expert</p> <p>12 witness.</p> <p>13 Q. Okay.</p> <p>14 MR. BROWN: And, Kim, I just want</p> <p>15 to make sure -- so this was already marked,</p> <p>16 so never mind.</p> <p>17 Q. (BY MR. BROWN) So you didn't have any</p> <p>18 role in preparing this?</p> <p>19 A. I spoke with Ms. Drawhorn at the</p> <p>20 point that I was ready to say what my opinion</p> <p>21 was, and so to that extent, I would have had -- I</p> <p>22 would have had, I suspect, a role in helping to</p> <p>23 prepare it. I certainly indicated the rules that</p> <p>24 I have looked at at that time.</p> <p>25 Now, obviously I've looked at other</p>

<p style="text-align: right;">Page 50</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 rules to just kind of trying to think what the</p> <p>3 parties might be talking about in terms of the</p> <p>4 broad scope, and though it wasn't raised by the</p> <p>5 motions and the responses, study of Rule 1.05</p> <p>6 confidentiality provisions and Rule 1.6 in regard</p> <p>7 to confidentiality provisions need -- needs to be</p> <p>8 included in.</p> <p>9 But otherwise this is a correct</p> <p>10 reflection of my recollection of the discussion</p> <p>11 with Ms. Drawhorn. I have not seen the document</p> <p>12 at the time of preparation of filing, and I</p> <p>13 actually saw it, I believe, when she transmitted</p> <p>14 it to me. I think last night was the first time</p> <p>15 I'd actually seen the document myself, but, you</p> <p>16 know, I may have seen it before that.</p> <p>17 Q. It's fair to say you did not edit</p> <p>18 this document in any way?</p> <p>19 A. That's fair.</p> <p>20 Q. Okay. Just to get terms straight so</p> <p>21 you and I are all talking about the same thing,</p> <p>22 there is -- among the documents you've</p> <p>23 considered, there is a SE Multi-Family Holdings,</p> <p>24 LLC, a Limited Liability Agreement in this case.</p> <p>25 Are you familiar with that?</p>	<p style="text-align: right;">Page 51</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. I've received it and read it.</p> <p>3 Q. Okay. Are you -- can we refer to</p> <p>4 that as the original LLC agreement and we'll be</p> <p>5 talking about the same thing?</p> <p>6 A. That'd be fine.</p> <p>7 Q. And then there's a First Amended and</p> <p>8 Restated Limited Liability Company Agreement.</p> <p>9 Can we refer to that as the amended</p> <p>10 LLC agreement?</p> <p>11 A. That would be fine.</p> <p>12 Q. And then there is a -- a bridge loan</p> <p>13 agreement. Let's see if I can find it. It's a</p> <p>14 bridge loan agreement that's dated as of</p> <p>15 September 26, 2018, by a group of borrowers that</p> <p>16 include both Highland and HCRC among others and</p> <p>17 some lenders, including KeyBank National</p> <p>18 Association and KeyBank Capital Partners.</p> <p>19 Are you familiar with that loan</p> <p>20 agreement?</p> <p>21 A. I've received it and read it.</p> <p>22 Q. Okay. Can we refer to that today as</p> <p>23 the bridge loan agreement?</p> <p>24 A. That would be fine.</p> <p>25 Q. Okay. Now, is it correct that you're</p>
<p style="text-align: right;">Page 52</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 not going to be offering any opinions in this</p> <p>3 matter other than the opinions that are reflected</p> <p>4 in this summary -- flip to the next page of</p> <p>5 Exhibit A.</p> <p>6 Is it true you're not going to be</p> <p>7 offering any opinions in this matter that are not</p> <p>8 identified in this Designation and Disclosure,</p> <p>9 the second page of Exhibit A?</p> <p>10 A. That's the basis of my opinion at</p> <p>11 this time. If there's other considerations that</p> <p>12 are brought to me, I may or may not have a</p> <p>13 different opinion. If I'm asked to formulate a</p> <p>14 different opinion, I'll formulate whatever</p> <p>15 opinion I feel is justified under the facts and</p> <p>16 the documents.</p> <p>17 So I can't say this is the only</p> <p>18 opinion that I will have, and I must also say</p> <p>19 that I will try to answer to the best of my</p> <p>20 ability whatever question is put to me by counsel</p> <p>21 or Court.</p> <p>22 Q. Okay. Well, I'm going to be asking</p> <p>23 you today, you know, to tell me everything you're</p> <p>24 going to testify on at trial. And of course, you</p> <p>25 know how this goes, if you have something that</p>	<p style="text-align: right;">Page 53</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 you come up with later that you want to testify</p> <p>3 at trial about, I can take the position that</p> <p>4 that's precluded if you don't tell me about it</p> <p>5 today.</p> <p>6 But, you know, everybody can argue</p> <p>7 about that, but I just want you to understand</p> <p>8 that if you don't tell me what you're going to</p> <p>9 say today, there will be an issue at the hearing</p> <p>10 if you try to say -- express an opinion that you</p> <p>11 haven't told me about today.</p> <p>12 Are we on the same page on that?</p> <p>13 A. I'll answer every question you ask</p> <p>14 me.</p> <p>15 Q. All right. And, again, I think I</p> <p>16 established this at the beginning, but where</p> <p>17 NexPoint Real Estate Partners and HCRC Partners</p> <p>18 are the same entity, and we're referring to them</p> <p>19 here as HCRC; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And do you acknowledge that</p> <p>22 Wick Phillips' current representation of HCRC in</p> <p>23 connection with its proof of claim challenging</p> <p>24 the ownership allocation to Highland under the</p> <p>25 LLC agreement is adverse to Highland?</p>

<p style="text-align: right;">Page 54</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Good enough. And do you</p> <p>4 acknowledge that Wick Phillips represented both</p> <p>5 HCRE and Highland along with other borrowers in</p> <p>6 connection with the bridge loan agreement?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So I'm going to go through</p> <p>9 this designation that identifies the opinions</p> <p>10 that you are going -- that your counsel has</p> <p>11 indicated you're going to testify to at the</p> <p>12 hearing.</p> <p>13 So it says, Mr. Selman may testify</p> <p>14 and offer opinions regarding the allegations</p> <p>15 underlying the debtor's motion to compel</p> <p>16 disqualification of Wick Phillips as counsel for</p> <p>17 HCRE, the DQ motion.</p> <p>18 So what opinion -- that's letter A.</p> <p>19 So with respect to letter A of this designation,</p> <p>20 what opinion are you going to express at the</p> <p>21 hearing?</p> <p>22 A. Well, I believe that the sentence</p> <p>23 indicates both testimony and the offering of</p> <p>24 opinions. I intend to testify about any of the</p> <p>25 allegations contained in both motion and I</p>	<p style="text-align: right;">Page 55</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 believe restated motion to -- or additional</p> <p>3 motion to disqualify and the motion or motions in</p> <p>4 opposition to the motion and its restatement to</p> <p>5 disqualify.</p> <p>6 And I intend to answer questions</p> <p>7 regarding what those allegations mean or don't</p> <p>8 mean. I'm not terribly sure that my opinions</p> <p>9 regarding other folks' drafting is terribly</p> <p>10 relevant to the Court's consideration, but I'm</p> <p>11 accepting the allegations both in the motion to</p> <p>12 disqualify and in the responsive motions as being</p> <p>13 factually based in provable form.</p> <p>14 Q. I'm interested in your opinions that</p> <p>15 you're going to testify to at the hearing. This</p> <p>16 designation says, Mr. Selman may testify -- so</p> <p>17 it's -- and offer opinions regarding, A, the</p> <p>18 allegations underlying the debtor's motion to</p> <p>19 compel disqualification of Wick Phillips. Okay.</p> <p>20 What opinions are you -- have you</p> <p>21 currently formed and you intend to testify to at</p> <p>22 the hearing on that subject?</p> <p>23 A. And this may be a matter of</p> <p>24 semantics. I intend to address the allegations</p> <p>25 in both A and B, but specifically with A to the</p>
<p style="text-align: right;">Page 56</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 extent that those would be grounded and provable</p> <p>3 facts and do that from an assumption standpoint.</p> <p>4 That would be the opinion that I would offer</p> <p>5 ultimately in regard to A and B.</p> <p>6 Q. What is the opinion that you will</p> <p>7 express with regard to A and B?</p> <p>8 A. I'm sorry. I interrupted you. I</p> <p>9 apologize.</p> <p>10 Q. Sorry. I think I may have</p> <p>11 interrupted you. But I'm entitled to have the</p> <p>12 opinions that you are going to testify to at the</p> <p>13 hearing, and so far you haven't told me what they</p> <p>14 are.</p> <p>15 So are you going to tell me what your</p> <p>16 opinions are in this deposition?</p> <p>17 MS. DRAWHORN: Objection. Asked</p> <p>18 and answered. He explained what his</p> <p>19 opinions were -- how he was going to</p> <p>20 testify regarding A and B.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Let's --</p> <p>23 A. My answer to your question is yes.</p> <p>24 Q. I'm not sure what the question you're</p> <p>25 answering now is?</p>	<p style="text-align: right;">Page 57</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Am I going to testify and give</p> <p>3 opinions is my understanding of the last</p> <p>4 question. And I hope I understood it correctly,</p> <p>5 but if that's the last question you asked, then</p> <p>6 my answer to that question is yes.</p> <p>7 Q. Have you formed opinions?</p> <p>8 A. I have.</p> <p>9 Q. Okay. Please tell me what your</p> <p>10 opinions are.</p> <p>11 A. My opinions are that the</p> <p>12 Wick Phillips firm represented both Highland and</p> <p>13 NREP together with other borrowers in regard to</p> <p>14 the bridge loan; that the bridge loan was</p> <p>15 consummated by execution on September 25, 2018,</p> <p>16 showing an effective date of September 26, 2018.</p> <p>17 My opinion is that Wick Phillips'</p> <p>18 representation of all parties ceased at that</p> <p>19 point, and that representation was limited on the</p> <p>20 part of Wick Phillips with regard to the named</p> <p>21 parties in regard to the bridge loan as of the</p> <p>22 time of the execution, perhaps a bit earlier, but</p> <p>23 I don't really have a way to isolate that.</p> <p>24 My opinion is further that some six</p> <p>25 months after the bridge loan was consummated, the</p>

<p style="text-align: right;">Page 58</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 SE Multi-Family Company restated itself, and in</p> <p>3 doing so presented a contestable matter that bore</p> <p>4 no relationship of any materiality or of any</p> <p>5 substance to the bridge loan.</p> <p>6 I believe the fact is that</p> <p>7 Wick Phillips began representation of NREP in</p> <p>8 regard to that narrow issue in a contested matter</p> <p>9 in the bankruptcy proceeding, and that this</p> <p>10 motion to disqualify and responsive motions about</p> <p>11 which we're talking today resulted from</p> <p>12 Wick Phillips' representation of NREP in a matter</p> <p>13 that is almost wholly dissimilar to the bridge</p> <p>14 loan. But that it certainly bears no same</p> <p>15 relationship to the bridge loan and appears to</p> <p>16 bear no substantial relationship to the bridge</p> <p>17 loan.</p> <p>18 I haven't yet formulated but I will</p> <p>19 formulate at some point an opinion with regard to</p> <p>20 the document that we talked about earlier, the</p> <p>21 release from loan agreement document that I've</p> <p>22 recently received and needs to be studied.</p> <p>23 I've reviewed it three or four times</p> <p>24 and I still have questions that need to be looked</p> <p>25 at before I'll have an opinion on it. But it is</p>	<p style="text-align: right;">Page 59</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 my opinion based on the plain language of the</p> <p>3 release document that the bridge loan as a result</p> <p>4 of the release agreement between Highland Capital</p> <p>5 and the bridge loan lenders are between</p> <p>6 Highland Capital and two other allied companies</p> <p>7 appears to even further isolate the bridge loan</p> <p>8 from the instant contested matter litigation.</p> <p>9 That having been said, there appears</p> <p>10 to be no discernible violation of Rule 1.9 of the</p> <p>11 ABA Model Rules or of 1.7 of the ABA Model Rules</p> <p>12 or of 1.06 of the Texas Disciplinary Rules of</p> <p>13 Professional Conduct or Rule 1.09 of the Texas</p> <p>14 Disciplinary Rules of Professional Conduct by or</p> <p>15 through Wick Phillips' present representation of</p> <p>16 NREP in regard to the amended and restated SE</p> <p>17 Multi-Family Holdings, LLC.</p> <p>18 Q. Sorry. You broke up on that last.</p> <p>19 Could you repeat the last thing you said,</p> <p>20 Mr. Selman?</p> <p>21 A. Yes. The amended and restated SE</p> <p>22 Multi-Family Holdings, LLC.</p> <p>23 Q. Before that. Go back -- could you</p> <p>24 repeat that entire last thought.</p> <p>25 A. Not without a great deal of</p>
<p style="text-align: right;">Page 60</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 assistance. If the court reporter got it --</p> <p>3 MR. BROWN: Yeah. Can the court</p> <p>4 reporter read back, you know, the last,</p> <p>5 say, minute of testimony.</p> <p>6 (Requested portion was read.)</p> <p>7 MR. BROWN: Okay. Okay.</p> <p>8 Q. (BY MR. BROWN) Mr. Selman, do you</p> <p>9 have -- is that the entirety of the opinion that</p> <p>10 you've currently formed in this matter?</p> <p>11 A. To the best of my ability, yes.</p> <p>12 Q. Okay.</p> <p>13 MR. BROWN: Can we take a -- about</p> <p>14 a five-minute break and we'll come back?</p> <p>15 MS. DRAWHORN: Sure.</p> <p>16 THE WITNESS: Absolutely.</p> <p>17 (Break from 3:40 p.m. to 3:49 p.m.)</p> <p>18 Q. (BY MR. BROWN) So, Mr. Selman, you</p> <p>19 understand you're still under oath?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. You just presented or</p> <p>22 testified to the opinion that you've said you</p> <p>23 would be offering at the hearing on this matter.</p> <p>24 And can you now tell me the basis for</p> <p>25 your conclusion that there is no basis for a</p>	<p style="text-align: right;">Page 61</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 violation of any of the Texas Rules of</p> <p>3 Professional Conduct or the Model Rules?</p> <p>4 A. There is no discernible similarity</p> <p>5 between the services that were rendered by</p> <p>6 Wick Phillips on the bridge loan and the services</p> <p>7 that are being rendered by Wick Phillips in</p> <p>8 regard to the Amended and Restated SE</p> <p>9 Multi-Family Holdings, LLC.</p> <p>10 They are not the same actions. They</p> <p>11 don't involve substantially similar issues, and</p> <p>12 in the event this release document means what it</p> <p>13 appears to say, then the bridge loan appears to</p> <p>14 be even further isolated away from the Amended</p> <p>15 and Restated SE Family Holdings -- excuse me --</p> <p>16 Multi-Family Holdings, LLC contested matter</p> <p>17 presents in issues of both fact and law.</p> <p>18 That aside, I am of the opinion that</p> <p>19 there is no discernible material similarity</p> <p>20 between the two representations and that</p> <p>21 thereby -- and they're certainly not the same</p> <p>22 representations, thereby there is no presentable</p> <p>23 violation of the either the ABA Model Rules or</p> <p>24 the Texas Disciplinary Rules of Professional</p> <p>25 Conduct that bear on this issue, which I</p>

<p style="text-align: right;">Page 62</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 understand to be the law standard that the Court</p> <p>3 may apply in determining his ruling or her ruling</p> <p>4 on this matter.</p> <p>5 Q. So let me ask you on this release</p> <p>6 agreement -- do you have a copy in front of you?</p> <p>7 A. I do.</p> <p>8 Q. And what's the date on it?</p> <p>9 A. October 7, 2019.</p> <p>10 Q. And do we agree that -- let's see --</p> <p>11 the -- the amended -- the Amended Limited</p> <p>12 Liability Company Agreement was dated March 15,</p> <p>13 2019, to be effective August 23, 2018; correct?</p> <p>14 A. Those are correct dates.</p> <p>15 Q. So the release took place substantial</p> <p>16 period of time after the First Amended Limited</p> <p>17 Liability Agreement; correct?</p> <p>18 A. Several months.</p> <p>19 Q. Yeah. So I'm trying to understand</p> <p>20 what basis -- what role the release has in your</p> <p>21 opinion?</p> <p>22 A. It appears to me from the exchange of</p> <p>23 documents in this matter that the position of the</p> <p>24 debtor in seeking disqualification is that</p> <p>25 Wick Phillips' representation of some of the</p>	<p style="text-align: right;">Page 63</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 borrowers in part of the bridge loan transaction</p> <p>3 disqualifies Wick Phillips.</p> <p>4 If that bridge loan didn't exist as</p> <p>5 of the time of representation in this matter or</p> <p>6 as of the present time, then the bridge loan</p> <p>7 bears even less relationship from a persuasive,</p> <p>8 from an argumentative, or from a factual</p> <p>9 perspective than it has been alleged to involve.</p> <p>10 More importantly -- and that's just a</p> <p>11 question that I'm dealing with at this point that</p> <p>12 I haven't finalized on with regard to an opinion.</p> <p>13 More importantly, I'm of the opinion</p> <p>14 that Wick Phillips' services that have been</p> <p>15 described in regard to the bridge loan are not</p> <p>16 the same as or substantially similar to the</p> <p>17 issues of the contested matter in any way</p> <p>18 whatsoever. They're just not related other than</p> <p>19 by pointing and conjecture, which may be exactly</p> <p>20 what this release has to do with the bridge loan.</p> <p>21 I just -- I mention that because it's something</p> <p>22 that I've recently received and I'm kind of</p> <p>23 struggling with in terms of what does this mean</p> <p>24 to the bridge loan.</p> <p>25 At the end of the day, with or</p>
<p style="text-align: right;">Page 64</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 without the release, I am of the opinion that the</p> <p>3 work done on the bridge loan by Wick Phillips for</p> <p>4 Highland Capital and for NREP is not the same as</p> <p>5 or substantially similar to the contested matter</p> <p>6 that's in progress on the Amended and Restated SE</p> <p>7 Multi-Family Holdings, LLC and bears little</p> <p>8 material relationship, if any at all, to the</p> <p>9 contested matter. Therefore, Wick Phillips, in</p> <p>10 my opinion, is not disqualified under the quoted</p> <p>11 rules from representing NREP as it's doing in the</p> <p>12 contested matter.</p> <p>13 Q. What I -- I'm not understanding,</p> <p>14 though, how the release, which occurred long</p> <p>15 after the bridge loan and long after the amended</p> <p>16 limited liability agreement, how the subsequent</p> <p>17 execution of the release of Highland from the</p> <p>18 obligations under the loan has any impact on</p> <p>19 whether or not the representation that</p> <p>20 Wick Phillips was involved in on behalf of</p> <p>21 Highland in connection with the bridge loan and</p> <p>22 its subsequent representation adverse to Highland</p> <p>23 on behalf of HCRE are either the same or a</p> <p>24 substantially related matter -- how does the</p> <p>25 release impact that analysis?</p>	<p style="text-align: right;">Page 65</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. At this point right now, I'm trying</p> <p>3 to tell you I don't know. It may. I haven't had</p> <p>4 enough time to study the document and to analyze</p> <p>5 it at this point to finalize an opinion. You</p> <p>6 asked me for all my opinions, and the best</p> <p>7 opinion I can give you on that at this point is</p> <p>8 it may have some impact on my analysis and it may</p> <p>9 have no impact on my analysis.</p> <p>10 Q. And right now, as you sit here -- and</p> <p>11 you have read the release; correct?</p> <p>12 A. I have.</p> <p>13 Q. And you've read the loan agreement;</p> <p>14 correct?</p> <p>15 A. I have.</p> <p>16 Q. And you've read the original LLC</p> <p>17 agreement and the amended LLC agreement; correct?</p> <p>18 A. I have.</p> <p>19 Q. And right now you're unable to</p> <p>20 articulate in any way whatsoever how the release</p> <p>21 impacts the analysis of whether Wick Phillips'</p> <p>22 prior representation and current representation</p> <p>23 are either the same or substantially related; is</p> <p>24 that true?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 66</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Okay. Well, why don't you tell me</p> <p>3 how -- tell me then how it does relate to it?</p> <p>4 A. In answer to your two-part question,</p> <p>5 it may impact material adversity. I don't know</p> <p>6 that. I don't believe at this point it impacts</p> <p>7 my opinion with regard to whether or not the</p> <p>8 representations in question here were the same or</p> <p>9 substantially similar.</p> <p>10 I still don't believe with or without</p> <p>11 the release that there is any identifiable</p> <p>12 sameness to the transactions at all, and there is</p> <p>13 no substantially related joinder between the two</p> <p>14 representations.</p> <p>15 However, this release may have a</p> <p>16 bearing on the issue of adversity or material</p> <p>17 adversity and may not. That's one additional</p> <p>18 element which you never reach in this analysis if</p> <p>19 your analysis is that Wick Phillips'</p> <p>20 representation in the bridge loan and</p> <p>21 Wick Phillips' representation in regard to the</p> <p>22 contested matter simply are not the same and are</p> <p>23 not substantially related to each other.</p> <p>24 You really don't reach that. And</p> <p>25 perhaps, you know, me looking at this document</p>	<p style="text-align: right;">Page 67</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 that I was sent and trying to find what it means</p> <p>3 in regard to these motions that have been filed</p> <p>4 and the responses that have been filed is a</p> <p>5 bridge too far in regard to this.</p> <p>6 My analysis is these two transactions</p> <p>7 just are not related to each other in any</p> <p>8 material way.</p> <p>9 Q. I want to understand something</p> <p>10 because now you've said that you thought the</p> <p>11 release might impact the analysis of material</p> <p>12 adversity.</p> <p>13 Do you mean to say that you think the</p> <p>14 release could impact the -- your conclusion that</p> <p>15 Wick Phillips' current representation of NCRE in</p> <p>16 the proof of claim contested matter is adverse to</p> <p>17 Highland? You previously acknowledged that it</p> <p>18 was. Are you saying that the release somehow</p> <p>19 changes that conclusion?</p> <p>20 A. No, that's not what I'm saying at</p> <p>21 all.</p> <p>22 Q. Okay.</p> <p>23 A. I've got a document sitting in front</p> <p>24 of me --</p> <p>25 Q. What do you mean material --</p>
<p style="text-align: right;">Page 68</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Excuse me just a second. I've got a</p> <p>3 document sitting in front of me that I've</p> <p>4 received and I've been asked about and I knew I</p> <p>5 was going to be asked about. And I'm trying to</p> <p>6 be completely honest and say I haven't fully</p> <p>7 formulated my opinion about what this means yet.</p> <p>8 I don't believe it's going to change my analysis</p> <p>9 or my opinion in any way at all.</p> <p>10 Q. I don't think it should either, but</p> <p>11 that's what I'm trying to explore.</p> <p>12 A. Right. Right. Right.</p> <p>13 Q. Okay. There is -- about two-thirds</p> <p>14 of the way down, there's a sentence that says, It</p> <p>15 is expected that Mr. Selman will further testify</p> <p>16 that the transactional timeline between the two</p> <p>17 transactions that appear to be fatally in</p> <p>18 opposition -- the two transactions -- It is</p> <p>19 expected that Mr. Selman will further testify</p> <p>20 that the transactional timeline between the two</p> <p>21 transactions appear to be fatally in opposition</p> <p>22 with any applicable potential for confidentiality</p> <p>23 information disclosure basis regarding the DQ</p> <p>24 motion, and that there is no identifiable</p> <p>25 confidential client information which could be</p>	<p style="text-align: right;">Page 69</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 exposed by a subsequent representation.</p> <p>3 So when you refer to the term</p> <p>4 "transactional timeline," what do you mean?</p> <p>5 A. I'm talking about the relationship of</p> <p>6 the work on the bridge loan to the relationship</p> <p>7 of the work on the contested matter.</p> <p>8 Q. Right. So you're talking about the</p> <p>9 fact that the bridge loan was, I think, sometime</p> <p>10 in September of 2018; correct? And -- well, tell</p> <p>11 me what you mean by -- tell me exactly what this</p> <p>12 reference to transactional timeline in this</p> <p>13 context means?</p> <p>14 A. When the bridge loan was being worked</p> <p>15 on up to the point that it was closed and</p> <p>16 representation ceased compared to the time that</p> <p>17 the contested matter was initiated, it doesn't</p> <p>18 appear to me that Wick Phillips was involved in</p> <p>19 the underlying transactions regarding the</p> <p>20 contested matter in any way, neither their</p> <p>21 attorneys nor their advice nor their counsel.</p> <p>22 It does appear that Wick Phillips</p> <p>23 represented both Highland and NREP among several</p> <p>24 other borrowers in regard to funding about half</p> <p>25 of the transaction made the basis of the bridge</p>

<p style="text-align: right;">Page 70</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 loan.</p> <p>3 But those two transactions in point</p> <p>4 of time and in point of transaction do not appear</p> <p>5 to bear on each other in any discernible way, and</p> <p>6 they're certainly not the same as or</p> <p>7 substantially similar to the two transactions.</p> <p>8 That's what I'm trying to say there.</p> <p>9 Q. You referenced the bridge loan</p> <p>10 funding about half of the transaction.</p> <p>11 What transaction are you referring</p> <p>12 to?</p> <p>13 A. I believe it was called the Unicorn</p> <p>14 transaction.</p> <p>15 Q. Project Unicorn, is that what you're</p> <p>16 referring to?</p> <p>17 A. Yeah. I -- I just used the term</p> <p>18 "Unicorn" because that's what I've seen.</p> <p>19 Q. Yeah. I'll represent to you I think</p> <p>20 that the way the parties referred to it was</p> <p>21 Project Unicorn in the documents.</p> <p>22 So when you refer to the transaction</p> <p>23 that the bridge loan funded approximately half</p> <p>24 of, that's what you mean?</p> <p>25 A. That's what I mean.</p>	<p style="text-align: right;">Page 71</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Okay. And have you reviewed the</p> <p>3 Project Unicorn documents, any documents relating</p> <p>4 to Project Unicorn?</p> <p>5 A. I have not.</p> <p>6 Q. Okay. But it's your understanding --</p> <p>7 A. Except -- Counsel, I'm interrupting</p> <p>8 you and I apologize.</p> <p>9 Q. Go ahead.</p> <p>10 A. Except to the extent that some of the</p> <p>11 bridge loan documents might have some bearing on</p> <p>12 whatever it was that Unicorn was and was doing.</p> <p>13 But the Unicorn project documents I have not</p> <p>14 reviewed.</p> <p>15 Q. But your understanding was that the</p> <p>16 bridge loan was to fund a portion of the Project</p> <p>17 Unicorn property acquisitions; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Then again in the very end of this</p> <p>20 paragraph, which is the Expert Disclosure and</p> <p>21 Designation, it says, It is expected that</p> <p>22 Mr. Selman will testify that the facts of the</p> <p>23 representation are disconnected in points of time</p> <p>24 and representation so that disclosure of</p> <p>25 confidential information is not possible based on</p>
<p style="text-align: right;">Page 72</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 transaction times and the significance of the</p> <p>3 drafting and of the core transaction documents by</p> <p>4 counsel other than Wick Phillips among other</p> <p>5 things.</p> <p>6 What do you mean -- what's meant by</p> <p>7 that?</p> <p>8 A. Well, again, I didn't write this, but</p> <p>9 the way I construe the sentence that you just</p> <p>10 read and is laying in front of me, what happened</p> <p>11 on the bridge loan was closed, whatever that was,</p> <p>12 and it was closed by disclosure to public</p> <p>13 sources.</p> <p>14 When you talk about confidential</p> <p>15 information, there are exceptions to confidential</p> <p>16 information under the disciplinary rules. One of</p> <p>17 these exceptions that takes information -- client</p> <p>18 information outside the realm of confidential</p> <p>19 information, which is the gravamen of a violation</p> <p>20 under both Rule 1.06 and Rule 1.09 with regard to</p> <p>21 prior representation is that the client has given</p> <p>22 consent of disclosure of confidential</p> <p>23 information.</p> <p>24 And that's what the bridge loan was,</p> <p>25 it was consent to disclose information. I don't</p>	<p style="text-align: right;">Page 73</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 know whether that information was confidential</p> <p>3 before it arrived in the hands of the various</p> <p>4 lawyers that handled this transaction. But</p> <p>5 assuming that the client considered that</p> <p>6 information to be confidential when the client</p> <p>7 said take this information and use it to get me</p> <p>8 money, do this loan with a third party, at that</p> <p>9 point there is no expectation of confidentiality</p> <p>10 and there's consent to disclosure.</p> <p>11 Q. Disclosure to who? Among the joint</p> <p>12 clients, do you mean?</p> <p>13 A. No, to a third party. You've gone</p> <p>14 outside the clients to a third party to disclose</p> <p>15 information.</p> <p>16 Q. So is your position that</p> <p>17 Wick Phillips' clients in connection with the</p> <p>18 loan agreement could not have engaged in any</p> <p>19 communications with Wick Phillips that were not</p> <p>20 transmitted to the lender?</p> <p>21 A. I'm not talking about that. I'm not</p> <p>22 talking about transmissions. I'm talking about</p> <p>23 the core operative elements of the bridge loan,</p> <p>24 the ones that would be related to substantially</p> <p>25 similar representation in the contested matter.</p>

<p style="text-align: right;">Page 74</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 Q. Okay.</p> <p>3 A. Those are no longer confidential.</p> <p>4 Q. And --</p> <p>5 A. Those apply --</p> <p>6 Q. Is your understanding of Rule 1.09</p> <p>7 that a matter cannot be the same or substantially</p> <p>8 related unless confidential information is</p> <p>9 disclosed?</p> <p>10 A. I think that's one of the elements of</p> <p>11 the Court's analysis of Rule 1.09 and motions to</p> <p>12 disqualify, yes, I do believe that.</p> <p>13 Q. You don't have an understanding that</p> <p>14 the transmission of confidential information is</p> <p>15 irrebuttably presumed when the prior and current</p> <p>16 representation -- and subsequent representations</p> <p>17 are in the same or substantially related matter,</p> <p>18 you don't believe that that's the state of the</p> <p>19 law?</p> <p>20 A. I'm not understanding the question</p> <p>21 you just asked.</p> <p>22 Q. Okay.</p> <p>23 A. I'm sorry.</p> <p>24 Q. So is it not the case that when there</p> <p>25 -- a lawyer represents a client in one matter</p>	<p style="text-align: right;">Page 75</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 that is the same or substantially related to a</p> <p>3 subsequent matter, that disqualification is</p> <p>4 merited, whether or not confidential information</p> <p>5 is transmitted?</p> <p>6 A. The transmission of confidential</p> <p>7 information by the attorney in the two matters is</p> <p>8 part of the analysis that the Courts do in regard</p> <p>9 to same or substantially related because of --</p> <p>10 Q. That's not my question.</p> <p>11 A. Excuse me -- because of the danger</p> <p>12 that confidential information may be revealed, if</p> <p>13 I'm understanding your question.</p> <p>14 Q. No. I'm trying to -- so do you</p> <p>15 understand the law to be that transmission of</p> <p>16 confidential information is a requirement to --</p> <p>17 to disqualify a lawyer under Section 1.09 or 1.9</p> <p>18 of the Model Rules?</p> <p>19 A. I understand that's a part of the</p> <p>20 test of the analysis of Rule 1.09 and Rule 1.06.</p> <p>21 Q. Is it a requirement? Can a lawyer be</p> <p>22 disqualified under either Model Rule 1.9 or Texas</p> <p>23 Rule 1.09 if the current and prior</p> <p>24 representations are the same or substantially</p> <p>25 related even if there is no evidence of that</p>
<p style="text-align: right;">Page 76</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 confidential information was transmitted in the</p> <p>3 prior representation?</p> <p>4 A. Yes.</p> <p>5 Q. Thank you. So, Mr. Selman, have you</p> <p>6 described fully each opinion you plan on offering</p> <p>7 at the hearing?</p> <p>8 A. I believe so, subject to the</p> <p>9 exceptions that I've made with my earlier answer</p> <p>10 regarding additional documents to review and</p> <p>11 reaching some conclusion on this release</p> <p>12 document.</p> <p>13 Q. Okay. But if there are no additional</p> <p>14 documents that are presented to you, and if you</p> <p>15 ultimately conclude that the release does not</p> <p>16 impact your opinion, then you have fully</p> <p>17 described to me the opinions you plan on offering</p> <p>18 at the hearing; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Have you disclosed to me all of the</p> <p>21 bases of those opinions?</p> <p>22 A. Yes.</p> <p>23 Q. Have you described all of the work</p> <p>24 that you've done in connection with this matter?</p> <p>25 A. Yes. Except for telling you the</p>	<p style="text-align: right;">Page 77</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 amount of time involved, which I'm simply --</p> <p>3 Q. Understood.</p> <p>4 A. -- not prepared to.</p> <p>5 Q. Do you plan to do additional work on</p> <p>6 this matter prior to the hearing?</p> <p>7 A. If I'm called on.</p> <p>8 Q. What would that -- I mean, what would</p> <p>9 that work -- well, do you believe that you need</p> <p>10 to do additional work to present the opinions</p> <p>11 that you've described to me today?</p> <p>12 A. Yes. If there's going to be live</p> <p>13 testimony, obviously I'm going to need at some</p> <p>14 point in the future to pick this file up again</p> <p>15 and look at it again and get it back in my mind</p> <p>16 again --</p> <p>17 Q. Yeah.</p> <p>18 A. -- and get it as well organized as</p> <p>19 all of y'all have gotten it for me today. But</p> <p>20 beyond that, I do not anticipate additional work</p> <p>21 right now, except trying to riddle this release</p> <p>22 through.</p> <p>23 Q. Okay. Do you intend to testify at</p> <p>24 the hearing concerning any matters which you have</p> <p>25 not discussed with me today?</p>

<p style="text-align: right;">Page 78</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 A. Well, the answer is if I'm called on</p> <p>3 to answer questions and there's no sustained</p> <p>4 objection made, then I'll answer question. But I</p> <p>5 don't plan on giving opinions other than the</p> <p>6 opinions that you've asked me to give and that</p> <p>7 I've given.</p> <p>8 Q. Okay. So I asked you to tell me all</p> <p>9 of the opinions that you presently intend to</p> <p>10 testify to at trial, and you told me you've done</p> <p>11 that; correct?</p> <p>12 A. I believe I've done that.</p> <p>13 Q. Okay. And you've given me all the</p> <p>14 bases for those opinions; correct?</p> <p>15 A. I believe so.</p> <p>16 Q. And at the present time, you don't</p> <p>17 have any other opinions or you've not formed any</p> <p>18 other opinions that you haven't discussed with me</p> <p>19 today that you intend -- strike that.</p> <p>20 At the present time, you do not have</p> <p>21 other opinions you intend to present at the</p> <p>22 hearing that you have not expressed to me today</p> <p>23 in this deposition; is that correct?</p> <p>24 A. At the present time, that's correct.</p> <p>25 Q. Okay. If you do -- if there is an</p>	<p style="text-align: right;">Page 79</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 attempt to offer additional opinions, we're going</p> <p>3 to reserve the right to re-depose you on those</p> <p>4 opinions. You understand that?</p> <p>5 A. Yes, probably.</p> <p>6 Q. All right. I'm not asking you to</p> <p>7 consent to it, I'm saying we're going to do it.</p> <p>8 We will certainly want to understand from you any</p> <p>9 opinions that you're going to testify to at the</p> <p>10 hearing, to the extent they haven't been</p> <p>11 disclosed today fully. Okay.</p> <p>12 Hold on, let me just go through these</p> <p>13 exhibits here, make sure I don't have any others.</p> <p>14 MR. BROWN: Okay. I don't have any</p> <p>15 further questions.</p> <p>16 MS. DRAWHORN: We'll reserve our</p> <p>17 questions for trial.</p> <p>18 THE REPORTER: And, Ms. Drawhom,</p> <p>19 are you guys ordering a copy?</p> <p>20 MS. DRAWHORN: Yes. And Ben said</p> <p>21 you can send it to me for the witness to</p> <p>22 review and sign.</p> <p>23 (Time noted - 4:23 p.m.)</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 80</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2</p> <p>3</p> <p>4 _____</p> <p>5 BEN SELMAN</p> <p>6</p> <p>7 Subscribed and sworn to before me this _____</p> <p>8 day of _____, 20____.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 81</p> <p>1 BEN SELMAN - 9/17/2021</p> <p>2 C E R T I F I C A T E</p> <p>3 I, Kim A. McCann, RMR, CRR, CSR in and</p> <p>4 for the State of Texas, do hereby certify:</p> <p>5 That BEN SELMAN, the witness whose</p> <p>6 deposition is hereinbefore set forth, was duly</p> <p>7 sworn by me and that such deposition is a true</p> <p>8 record of the testimony given by such witness;</p> <p>9 That pursuant to FRCP Rule 30,</p> <p>10 signature of the witness was requested by the</p> <p>11 witness or other party before the conclusion of</p> <p>12 the deposition;</p> <p>13 I further certify that I am not related</p> <p>14 to any of the parties to this action by blood or</p> <p>15 marriage; and that I am in no way interested in</p> <p>16 the outcome of this matter.</p> <p>17 IN WITNESS WHEREOF, I have hereunto</p> <p>18 set my hand this September 17, 2021.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Kim A. McCann, RMR, CRR, CSR</p> <p>23</p> <p>24</p> <p>25</p>

1 BEN SELMAN - 9/17/2021
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 Case Name: In re: Highland Capital Management
4 Dep. Date: September 17, 2021
5 Deponent: BEN SELMAN
6 Pg. Ln. Now Reads Should Read Reason
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18
19 _____
20 Signature of Deponent
21 SUBSCRIBED AND SWORN BEFORE ME
22 THIS _____ DAY OF _____, 20____.
23
24 _____
25 (Notary Public) MY COMMISSION EXPIRES: _____

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